

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES JACKSON, *et al.*,

Plaintiffs,

CASE NO. 1:13-CV-636

v.

HON. ROBERT J. JONKER

DANIEL HEYNS, *et al.*,

Defendants.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 54) and Plaintiff Richards's Objections to the Report and Recommendation (docket # 58). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation, which recommends denial of Plaintiff's motion, is factually sound and legally correct.

In his Motion for Preliminary Injunction (docket # 50), Plaintiff Richards requests the Court to order the Michigan Department of Corrections "to evacuate Units 1 and Unit 8 of Bellamy Creek Corr. Facility due to the presence of both black mold and ecoli." (*Id.*) It is undisputed that Plaintiff Richards has been transferred to the Ionia Correctional Facility and no longer resides at the Bellamy Creek Correctional Facility.¹ The Magistrate Judge properly found that Plaintiff Richards's claim for injunctive relief based on conditions at the Bellamy Creek Correctional Facility is moot in light of his transfer to the Ionia Correctional Facility and that the motion must therefore be denied. *See Berryman v. Granholm*, 343 F. App'x. 1, 4-5 (6th Cir. 2009) (prisoner's claim for injunctive and declaratory relief mooted by his transfer to new facility); *Henderson v. Martin*, 73 F. App'x 115, 117 (6th Cir. 2003) (same); *Kensu v. Haight*, 87 F. 3d 172, 175 (6th Cir. 1996) (same).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 54) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion for Preliminary Injunction (docket # 50) is **DENIED**.

Dated: September 3, 2014

/s/ Robert J. Jonker

ROBERT J. JONKER

UNITED STATES DISTRICT JUDGE

¹The Court also notes that none of the other plaintiffs in this case are incarcerated at the Bellamy Creek Correctional Facility.